

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ALBERT SCHUHOLZ,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 04-3486-CV-S-RED-H
)	
ROBERT McFADDEN, Warden, et al.,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because this Court lacks jurisdiction of petitioner's claims, it will be recommended that leave to proceed in forma pauperis be denied.

As grounds for relief in habeas corpus, petitioner alleges that he is entitled to be discharged from his commitment under 28 U.S.C. § 4244.

A review of the file and records in the case indicates that petitioner is confined at the Medical Center with a provisional sentence of 121 months of imprisonment, and a mental health commitment authorized by 18 U.S.C. § 4244. His sentence and commitment were imposed by the District Court for the Eastern District of Kentucky. According to Dennis Bitz, Attorney Advisor at the Medical Center, petitioner's projected release date for completion of his provisional sentence is April 30, 2007.

Regardless of petitioner's attempt to obtain this Court's jurisdiction, it is clear that he is

challenging his mental health commitment. Under the applicable statutes, petitioner's remedy lies in the committing court. 18 U.S.C. § 4247(h). The law requires that his attempt to pursue a discharge from his mental health commitment be made in the judicial district where the commitment was ordered. See Archuleta v. Hedrick, 365 F.3d 644, 648-49 (8th Cir. 2004).

It must therefore be recommended that the petition herein for writ of habeas corpus be dismissed without prejudice.

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis and that the petition herein for a writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
United States Magistrate

Date: 12/19/05